
Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Butterfield Broadcasting Corporation)	EB-04-ST-263
)	
Licensee of AM Station KULE)	NAL/Acct. No.: 200532980003
Ephrata, Washington)	FRN: 0004281150
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: December 14, 2004

By the District Director, Seattle Office, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Butterfield Broadcasting Corporation ("Butterfield"), licensee of station KULE, in Ephrata, Washington, apparently willfully and repeatedly violated Section 73.49 of the Commission's Rules ("Rules")¹ by failing to effectively enclose its AM broadcast tower. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"),² that Butterfield is apparently liable for a forfeiture in the amount of seven thousand dollars (\$7,000).

II. BACKGROUND

2. On July 12, 2004, an agent from the Commission's Seattle Field Office conducted an inspection of the AM antenna tower used by Butterfield to broadcast AM station KULE. According to its license, the KULE antenna tower is series fed and, therefore, required to be fenced. Upon inspection of the antenna tower, the field agent found that the gate at the perimeter of the antenna site was broken and open.³ Specifically, on the north and west sides of the fence, the fence and fence frame extended almost to the ground. On the east and south sides of the fence, however, the ground sloped downward. The fence did not compensate for the slope of the ground, creating a 12 to 18 inch gap between the ground and the start of the fence. This gap, which ran along the entire length of the 20 foot east side and the 10 foot south side, was large enough to allow access to the interior of the fence and the base of the tower.

3. On July 13, 2004, an agent from the Seattle Field Office conducted a broadcast inspection at station KULE in Ephrata, Washington. The field agent was accompanied by the station manager of KULE to the AM antenna tower site. At the site, the agent informed the KULE station manager that the perimeter gate was broken and that the antenna tower base fence did not effectively enclose the base of the antenna tower. The KULE station manager stated that he would fix the base fence.

4. On August 9, 2004, an agent from the Seattle Field Office again conducted an inspection of the KULE antenna tower. The field agent found that the gate at the perimeter of the antenna site remained broken and open, and that the antenna tower base fence was not repaired to effectively enclose the antenna

¹47 C.F.R. § 73.49.

²47 U.S.C. § 503(b).

³The antenna site is a short distance from a residential community.

tower.

III. DISCUSSION

5. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term "willful" as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.⁴ The term "repeated" means the commission or omission of such act more than once or for more than one day.⁵

6. Section 73.49 of the Rules states that antenna towers having radio frequency potential at the base (series fed, folded unipole, and insulated base antennas) must be enclosed within effective locked fences or other enclosures.⁶ The KULE AM antenna tower is series fed. At the time of the July inspection, the fence at the base of the KULE AM antenna tower did not effectively enclose the antenna. On the south and east sides of the antenna tower fence, there was a significant gap at the base of the fence. During the July inspection, a Commission field agent warned the KULE station manager about the fence and the station manager said the fence would be fixed. During the August inspection, the field agent found that the fence had not been fixed and that the gap in the fence allowed public access to the AM antenna tower. Butterfield had been warned by a Commission field agent of the violation concerning the fence, therefore, the violation was willful. The violation occurred on more than one day, therefore it was repeated. Based on the evidence before us, we find that Butterfield willfully and repeatedly violated Section 73.49 of the Rules by failing to enclose the KULE AM antenna tower within an effective enclosed fence.

7. Pursuant to *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, ("Forfeiture Policy Statement"), and Section 1.80 of the Rules, the base amount for failure to maintain an effective AM tower fence is seven thousand dollars, \$7,000.⁷ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require.⁸ Applying the *Forfeiture Policy Statement*, Section 1.80, and the statutory factors, a \$7,000 forfeiture is warranted.

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80 of the Commission's Rules, Butterfield Broadcasting Corporation is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in

⁴Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁵Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

⁶47 C.F.R. § 73.49.

⁷12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. §1.80.

⁸47 U.S.C. § 503(b)(2)(D).

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the amount of seven thousand dollars (\$7,000) for violation of Section 73.49 of the Rules.⁹

9. IT IS FURTHER ORDERED that, pursuant to Section 1.80 of the Commission's Rules within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, Butterfield Broadcasting Corporation SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

10. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. Payment by overnight mail may be sent to Bank One/LB 73482, 525 West Monroe, 8th Floor Mailroom, Chicago, IL 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259.

11. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Western Region, Seattle Office, 11410 NE 122nd Way, Ste. 312, Kirkland, Washington, 98034-6927 and must include the NAL/Acct. No. referenced in the caption.

12. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

13. Requests for payment of the full amount of this Notice of Apparent Liability for Forfeiture under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁰

14. IT IS FURTHER ORDERED that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Butterfield Broadcasting Corporation, 706 Butterfield Road, Yakima, Washington, 98901. A copy of this Notice of Apparent Liability will be sent to KULE-AM at 910 Basin St SW, Ephrata, Washington, 98823

FEDERAL COMMUNICATIONS COMMISSION

Dennis J. Anderson
District Director
Seattle Office
Western Region
Enforcement Bureau

⁹47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 1.80, 73.49.

¹⁰See 47 C.F.R. § 1.1914.